

§§ 750.14–750.20 [Reserved]

Subpart B—Federal Tort Claims Act

§ 750.21 Scope of subpart B.

This subpart provides information regarding the administrative processing and consideration of claims against the United States under the FTCA. The FTCA is a limited waiver of sovereign immunity. Under the FTCA, an individual can seek money damages for personal injury, death, or property damage caused by the negligent or wrongful act or omission of a Federal employee acting within the scope of employment. The FTCA also provides for compensation for injuries caused by certain intentional, wrongful conduct. The liability of the United States is determined in accordance with the law of the State where the act or omission occurred.

§ 750.22 Exclusiveness of remedy.

(a) The Federal Employees Liability Reform and Tort Compensation Act of 1988, Public Law 100–694 (amending 28 U.S.C. 2679(b) and 2679(d)), provides that the exclusive remedy for damage or loss of property, or personal injury or death arising from the negligent or wrongful acts or omissions of all Federal employees, acting within the scope of their employment, will be against the United States. This immunity from personal liability does not extend to allegations of constitutional torts, nor to allegations of violations of statutes specifically authorizing suits against individuals.

(b) Other statutory provisions create immunity from personal liability for specific categories of Federal employees whose conduct, within the scope of their employment, gives rise to claims against the Government. Department of Defense health care providers are specifically protected by 10 U.S.C. 1089, the Gonzalez Act. DOD attorneys are specifically protected by 10 U.S.C. 1054.

§ 750.23 Definitions.

(a) *Negligent conduct.* Generally, negligence is the failure to exercise that degree of care, skill, or diligence a reasonable person would exercise under

similar circumstances. Negligent conduct can result from either an act or a failure to act. The law of the place where the conduct occurred will determine whether a cause of action lies against the Government. 28 U.S.C. 1346(b) and 2674.

(b) *Intentional torts.* Although any employee who commits an intentional tort is normally considered to be acting outside the scope of employment, the FTCA does allow claimants to seek compensation for injuries arising out of the intentional torts of assault, battery, false imprisonment, false arrest, abuse of process, and malicious prosecution, if committed by a Federal investigative or law enforcement officer. An “investigative or law enforcement officer” is any officer of the United States empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law. 28 U.S.C. 2680(h).

(c) *Government employees*—(1) *General.* “Employee of the Government,” defined at 28 U.S.C. 2671, includes officers or employees of any Federal agency, members of the U.S. military or naval forces, and persons acting on behalf of a Federal agency in an official capacity.

(2) *Government contractors.* Government (also referred to as independent) contractors, are those individuals or businesses who enter into contracts with the United States to provide goods or services. Because the definition of “Federal agency,” found at 28 U.S.C. 2671, specifically excludes “any contractor with the United States,” the United States is generally not liable for the negligence of Government contractors. There are, however, three limited exceptions to the general rule, under which a cause of action against the United States has been found to exist in some jurisdictions. They are:

(i) Where the thing or service contracted for is deemed to be an “inherently dangerous activity”;

(ii) where a nondelegable duty in the employer has been created by law; or,

(iii) where the employer retains control over certain aspects of the contract and fails to discharge that control in a reasonable manner.